

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CHAMBER SUMMONS NO.698 OF 2005

IN

SUIT NO.511 OF 1994

P.S.Bhide & Ors. .. Plaintiffs.

V/s.

V.V.Bhide and ors. .. Defendants.

Mr.Rajesh Shah i/b Solomon & Co.for Plaintiffs.
Mr.Parag Kale for defendant No.1(a) and 3.

CORAM: A.M.KHANWILKAR, J

DATE : SEPTEMBER 14, 2005.

P.C. :

1. Heard counsel for the parties. Perused the pleadings.

2. By this application, plaintiffs seek to amend the plaint, so as to introduce paragraph No.23(a) following paragraph 23 of the plaint. According to the plaintiffs the facts stated in proposed 23(a) are already subject matter of evidence as well as pleadings already on record. The Plaintiffs intend to only elaborate the said facts.

3. The counsel for the defendant No.1(a) and 3 however, opposes this application on the ground that such relief cannot be granted in the fact situation

of the present case, as recording of evidence is already completed and in fact, the matter is at the stage of oral argument.

4. Indeed, in such situation, it would have been difficult to accept the request made on behalf of the plaintiff. However, the plaintiffs through counsel assure that the plaintiffs will not request the court for permitting them to had further evidence in the light of the proposed amendment, if granted. This statement is made on instruction by the advocate for the plaintiffs. As plaintiffs will not insist for recording of any further evidence inspite of granting leave to amend the plaint, by incorporating proposed paragraph-23(a), in my opinion, no prejudice will be caused to the defendants, if such course is adopted.

5. Counsel for the defendant further submits that the plaintiffs are asserting certain new facts in proposed paragraph No.23(a). As mentioned earlier, as the plaintiffs have no intention to adduce further evidence, in that case the fact which is asserted in proposed paragraph-23(a), if is not a proved facts in evidence already on record, it is open to defendants to persuade to Court to ignore the said fact as not proved.

6. Viewed in this perspective, no prejudice would cause to the defendants if the amendment as prayed was to be granted on the assurance given by the plaintiffs that they will not insist for recording of evidence either before the trial court or at a later stage in appeal. That assurance is accepted.

7. Accordingly, Chamber Summons is made absolute in terms of prayer clause (a). Amendment to be carried out within two weeks. No order as to costs.